

COOPERATION AGREEMENT

This Cooperation Agreement, entered into as of February , 1982 by and between the Boston Redevelopment Authority, a public body politic and corporate organized under Chapter 121B of the General Laws of Massachusetts (the "Authority") and Bain & Company, a Massachusetts corporation having a usual place of business at Three Faneuil Hall Marketplace, Boston, Massachusetts ("Bain").

BACKGROUND

1. The Authority has adopted an Urban Renewal Plan for the Downtown Waterfront -- Faneuil Hall Area, No. Mass. R-77 (the "Renewal Area"), in the City of Boston. By Chapter 663 of the Acts of 1964, the Commonwealth of Massachusetts granted all of its right, title and interest in and to the tidelands in the Renewal Area to the Authority subject to certain conditions.

2. Bain holds an option to purchase the land at 390-400 Atlantic Avenue, more particularly described in Exhibit A ("400 Atlantic Avenue"), together with the improvements thereon. Bain proposes to redevelop the existing building at 400 Atlantic Avenue for use as its office headquarters. 400 Atlantic Avenue is located entirely within the Renewal Area.

3. Bain and the Authority wish to dedicate for public use the portion of 400 Atlantic Avenue bounded on the east by the Harbor Line of Boston Harbor established by Chapter 170

4168
8917

of the Acts of 1880 and on the west by a line 15 feet westerly of and parallel to said Harbor Line (such portion being referred to herein as "Parcel A").

4. By Chapter 673 of the Acts of 1981, the Commonwealth of Massachusetts has given Bain and its successors in interest an irrevocable right to use 400 Atlantic Avenue as proposed in the Plans, and has relinquished any residual Commonwealth tidelands interest in 400 Atlantic Avenue, subject only to the maintenance of a walkway on Parcel A for public pedestrian and marine use.

5. The Authority holds title to a parcel of land adjacent to the northern boundary of Parcel A known as Foster's Wharf, more particularly described in Exhibit B ("Foster's Wharf"). Foster's Wharf is contained entirely within the Renewal Area. Bain and the Authority wish to establish their mutual rights and obligations with respect to the portion of Foster's Wharf bounded on the south by 400 Atlantic Avenue and on the north by a line 31 feet northerly of and parallel to the north boundary of 400 Atlantic Avenue (such portion being referred to herein as "Parcel B").

6. Bain and the Authority desire that site improvements be developed and maintained for public pedestrian and marine use on Parcels A and B (the "Site Improvements") in accordance with preliminary plans and specifications approved by the Authority and listed in Exhibit C (the "Site Plans").

7. By a decision (the "Zoning Decision") entered in the Building Department October 6, 1981, the City of Boston Board

of Appeal has granted a variance permitting a 6.42 floor-to-area ratio at 400 Atlantic Avenue, and a conditional use permit allowing on-site parking for four cars, on the condition that the rehabilitation of 400 Atlantic Avenue (the "Rehabilitation") be subject to design review by the Authority.

8. As part of the Rehabilitation, Bain proposes to rehabilitate the north wall of the existing building at 400 Atlantic Avenue by installing a new masonry veneer over the existing wall and placing new windows therein in accordance with the preliminary plans approved by the Authority and listed in Exhibit D (the "Rehabilitation Plans").

AGREEMENT

Now, therefore, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Title.

Within thirty (30) days after Bain or its nominee takes title to 400 Atlantic Avenue (the person or entity taking title being referred to hereinafter as "Owner"), the Authority shall transfer and convey to Owner by a good and sufficient quitclaim deed all right, title and interest of the Authority in and to the tidelands in 400 Atlantic Avenue, subject to a reserved easement for public marine and pedestrian use of Parcel A. As part of such deed, the Authority shall grant to Owner the right and easement to enter and occupy Parcels A and B, to have access to the building at 400 Atlantic Avenue across Parcels A and B, to construct and maintain the Site Improvements

on Parcels A and B in accordance with the Site Plans and the provisions hereof, and to install and maintain a new masonry veneer having an aggregate thickness of not more than 12 inches over the existing north wall of the building at 400 Atlantic Avenue, and to install and maintain windows therein, in accordance with the Rehabilitation Plans and the provisions hereof. (The date of recording of such deed at the Suffolk Registry of Deeds is referred to hereinafter as the Closing Date.)

2. Construction.

a. Site Improvements. Subject to obtaining the necessary governmental approvals for development of the Site Improvements, and to the provisions of Section 3, Owner shall commence construction of the Site Improvements in accordance with the Site Plans not later than 120 days after the Closing Date and shall complete construction no later than 24 months from the Closing Date, or as may be extended by permission of the Authority, which shall not be unreasonably withheld. No material modifications in the Site Plans, or in the design, facilities or use of the Site Improvements subsequent to the original construction thereof (other than modifications required by any governmental agency or authority) shall be made without the prior approval in writing in each instance of the Authority.

b. Rehabilitation. Owner shall not apply for a building permit for the Rehabilitation without the prior certification of the Authority that the work to be done or completed as set forth in the permit application is in accordance with Final Rehabilitation Plans (as defined below) approved by the Authority.

No work shall be done on the Rehabilitation unless such work conforms in every material respect with such Final Rehabilitation Plans, and no material modifications in such Final Rehabilitation Plans shall be permitted by change order or otherwise, without the prior approval in writing in each instance of the Authority. Failure of the Authority to approve or disapprove a requested modification within 30 days of receipt shall be treated as approval for purposes of the foregoing sentence. It is understood and agreed that the building will be rehabilitated free and clear of any billboard type roof signs and that all exterior signs are subject to the design review of the Authority.

"Final Rehabilitation Plans" for purposes of this paragraph means working drawings and specifications suitable for bidding, including a written statement of any differences from the Rehabilitation Plans listed in Exhibit D, to the extent that such drawings and specifications indicate or apply to the facade treatment, floor-to-area ratio, any parking arrangements, or any aspect of the external appearance of the Rehabilitation. No approval is required under this Section for any aspect of design or construction of the interior spaces, structure or systems included as part of the Rehabilitation, or for any foundation work, and no approval required under this Section shall be withheld from any aspect of the Final Rehabilitation Plans which is clearly contemplated and permitted by the Rehabilitation Plans and the provisions of this Agreement.

c. Certificate of Completion. Promptly after substantial completion of the Rehabilitation and Site Improvements in accordance with the provisions of this Agreement, the Authority will

furnish the Owner with a certificate of completion (the "Certificate"). For purposes of the foregoing sentence "substantial completion" shall be deemed to have occurred when the architect for the Rehabilitation and Site Improvements has certified to the Authority that the value of the work remaining to be done is less than one percent of the original contract price of the Rehabilitation and Site Improvements. The Certificate shall be, and it shall be so provided in the Certificate itself, a conclusive determination of satisfaction and termination of the obligations of the Owner under this Section 2 and the Zoning Decision. The Certificate shall be in such form as will enable it to be recorded in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Authority shall refuse or fail to provide the Certificate, the Authority shall, within 30 days after receipt by the Authority of a written request by the Owner, provide the Owner with a written statement, indicating in adequate detail in what respects the Owner has failed to complete the Rehabilitation or Site Improvements in accordance with the provisions of this Agreement or is otherwise in default and what measures or acts will be necessary, in the opinion of the Authority, for the Owner to take or perform in order to obtain the Certificate.

3. Site Use.

Except as provided in Section 1 and this Section 3, Parcels A and B shall be maintained for public pedestrian and marine use, and no commercial activities shall be conducted and no buildings erected on or over Parcels A and B. The Authority may, however, entertain and approve any proposal for development

of so much of Parcel B as lies within 50 feet of the easterly line of Atlantic Avenue, provided that any building which is part of such development shall be separated from the north wall of the building at 400 Atlantic Avenue (as it may then have been rehabilitated) by its own independent external wall and that the Authority shall afford Owner notice and a 30-day opportunity to comment upon any such proposal prior to its approval. Upon such approval, all rights of Owner hereunder with respect to the land in Parcel B within 50 feet of the easterly line of Atlantic Avenue, and all obligations of Owner hereunder with respect to Site Improvements located or to be located on such land, shall cease. The Authority may grant subsurface easements in Parcel B to third parties, provided that such parties agree to give Owner a reasonable opportunity in advance to review plans for possible impact on the foundation of the building at 400 Atlantic Avenue and to restore the surface promptly without expense to Bain or Owner after each excavation. The Owner further agrees not to oppose any Authority approved development of the land of the Authority north of and adjacent to Parcel B.

4. Site Maintenance.

Owner shall bear the cost of lighting the Site Improvements and of watering plantings in the Site Improvements, and shall control such lighting and watering. Subject to the restoration of any excavation permitted under Section 3, Owner shall at its own expense maintain the Site Improvements and the facilities thereof, including the plantings therein in good and clean order and condition. Owner may, with the concurrence of the Authority which shall not be unreasonably withheld, for purposes

of public safety, from time to time, close the Site Improvements to public access because of snow or other inclement weather conditions or because of requirements of maintenance or repair.

5. Liability.

Subject to the restoration of any excavation permitted under Section 3, Owner shall use reasonable care to keep the Site Improvements in safe physical condition for ordinary pedestrian use, but shall have no responsibility for policing the Site Improvements or maintaining order therein, and shall indemnify and save harmless the Authority against and from all loss, claim, damage and liability arising out of accidental injury or death to persons or property occurring within Parcel A or Parcel B and resulting from Owner's failure to comply with the terms of this Agreement. Owner shall have no responsibility for any real estate taxes, or other taxes or public charges in lieu of or in substitution therefor, levied, assessed or imposed with respect to the Site Improvements on Parcel B and the Authority shall indemnify Owner against any and all such taxes and charges.

6. Insurance.

Owner shall keep all of the insurable property and equipment in respect of the Site Improvements insured by fire, extended coverage and additional risk insurance in commercially reasonable amounts, with loss payable to Owner, the Authority and any mortgagee, and any cancellations or change to be ineffective until at least 10 days after notice thereof to all loss payees. Certificates of such policies and renewals shall be filed with the Authority. Following any damage or destruction to all or part of the Site Improvements, proceeds of insurance

shall be applied to the repair or reconstruction of the Site Improvements in conformity with the Site Plans, with any excess proceeds to be retained by Owner subject to the rights of any mortgagee and the Authority.

7. Discrimination.

Owner shall not discriminate or permit discrimination upon the basis of race, color, sex, religion or national origin in connection with the employment or application for employment of persons for the construction or maintenance of the Site Improvements.

8. Cooperation.

Owner and the Authority will cooperate in obtaining the necessary governmental approvals for the development of the Site Improvements. Owner will cooperate (without expense to Owner) with proposals of the Harbormaster or the Authority for a boat landing adjacent to the east boundary of Parcel A or for connection of the Site Improvements to a walkway at the rear of the adjacent U.S. Customs Stores Appraisals Building. Owner will not formally oppose any development of the land of the Authority north of and adjacent to Parcel B. Owner may, however, formally oppose any plan of the Boston Water and Sewer Commission to construct sewer pipes in a manner that would obstruct marine access to the Improvements or disturb the natural marine environment.

9. Successors and Assigns.

Notwithstanding any other provision hereof, the rights and obligations under this Agreement shall benefit and bind

Bain only for as long as it is the owner of 400 Atlantic Avenue, and shall benefit and bind any and all future successors and assigns of Bain for as long as they are owners of 400 Atlantic Avenue, and shall bind any and all future successors and assigns of the Authority for as long as they are owners of Foster's Wharf.

10. Default.

In the event that either party shall at any time notify the other party in writing of any breach or default, specified in such notice, in the performance of any obligation hereunder, and the defaulting party shall not within ninety (90) days after receipt by it of such notice cure or correct such breach or default or commence and thereafter diligently prosecute such curing or correction, then the party giving notice may elect either (i) to terminate this Agreement by further notice in writing, or (ii) to institute an action to compel specific performance and the payment of any damages, expenses and costs (including in the case of an action by the Authority reasonable expenses and costs incurred in such action).

11. Approvals and Notices.

Whenever any approval, consent, extension of time, certification or similar action of the Authority is required hereunder, the same shall not be unreasonably withheld or delayed. Owner shall at all times keep the Authority provided with an up-to-date list of names and addresses of mortgagees holding mortgages on all or any part of 400 Atlantic Avenue, and the Authority shall provide all mortgagees so listed with simultane-

ous copies of all notices, approvals, consents, certifications or other communications to Owner hereunder. Any such mortgagee shall have the right to cure any default by Owner hereunder within the time period provided for such cure, upon written notice to the Authority of its intent to do so. All notices shall be in writing signed by a duly authorized partner or officer of Owner or the Authority, and shall be deemed given when mailed by registered or certified mail, to Owner c/o Carl M. Sapers, Hill & Barlow, 225 Franklin Street, Boston, Massachusetts 02110; to the Authority, City Hall, Boston, Massachusetts 02201; and to any mortgagee at its last known address.

12. Term.

If Bain or its nominee fails to take title before January 1, 1983, or such later date as the parties may agree to, this agreement shall terminate and be of no further force and effect.

Executed as a sealed Massachusetts instrument.

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Robert J. Ryan, Director

BAIN & COMPANY

By: _____

COMMONWEALTH OF MASSACHUSETTS

, ss.

, 1982

Then personally appeared Robert J. Ryan as Director of the Boston Redevelopment Authority and swore that execution of the foregoing constituted his free act and deed, before me,

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

, ss.

, 1982

Then personally appeared _____ as _____ of Bain & Company and swore that execution of the foregoing constituted his free act and deed, before me,

Notary Public

My commission expires:

Exhibit A

400 ATLANTIC AVENUE

Beginning at a point on the easterly side of Atlantic Avenue, at the northwest corner of property now or formerly of the United States of America, continuing along the easterly line of Atlantic Avenue N. 14° -38'-36" E. 108.08' to the southwest corner of land now or formerly of Boston Redevelopment Authority, then continuing S. 78° -07'-05" E. 201.29' by land now or formerly of Boston Redevelopment Authority to a point, thence along a line perpendicular to the Harbor Line in Boston Harbor established by Chapter 170 of the Acts of 1880 2.75' to said Harbor Line, thence along said Harbor Line S. 20° -54'-26" W. 136.35' by Boston Harbor to a point, thence along a line perpendicular to said Harbor Line 3.10' to a point, thence N. 69° -54'-34" W. 186.68' by land now or formerly of the United States of America to the point of beginning, all as shown on a "Plan of Land in Boston, Mass. (Suffolk County)" dated April 14, 1981, revised May 20, 1981, by Boston Survey Consultants.

Exhibit B

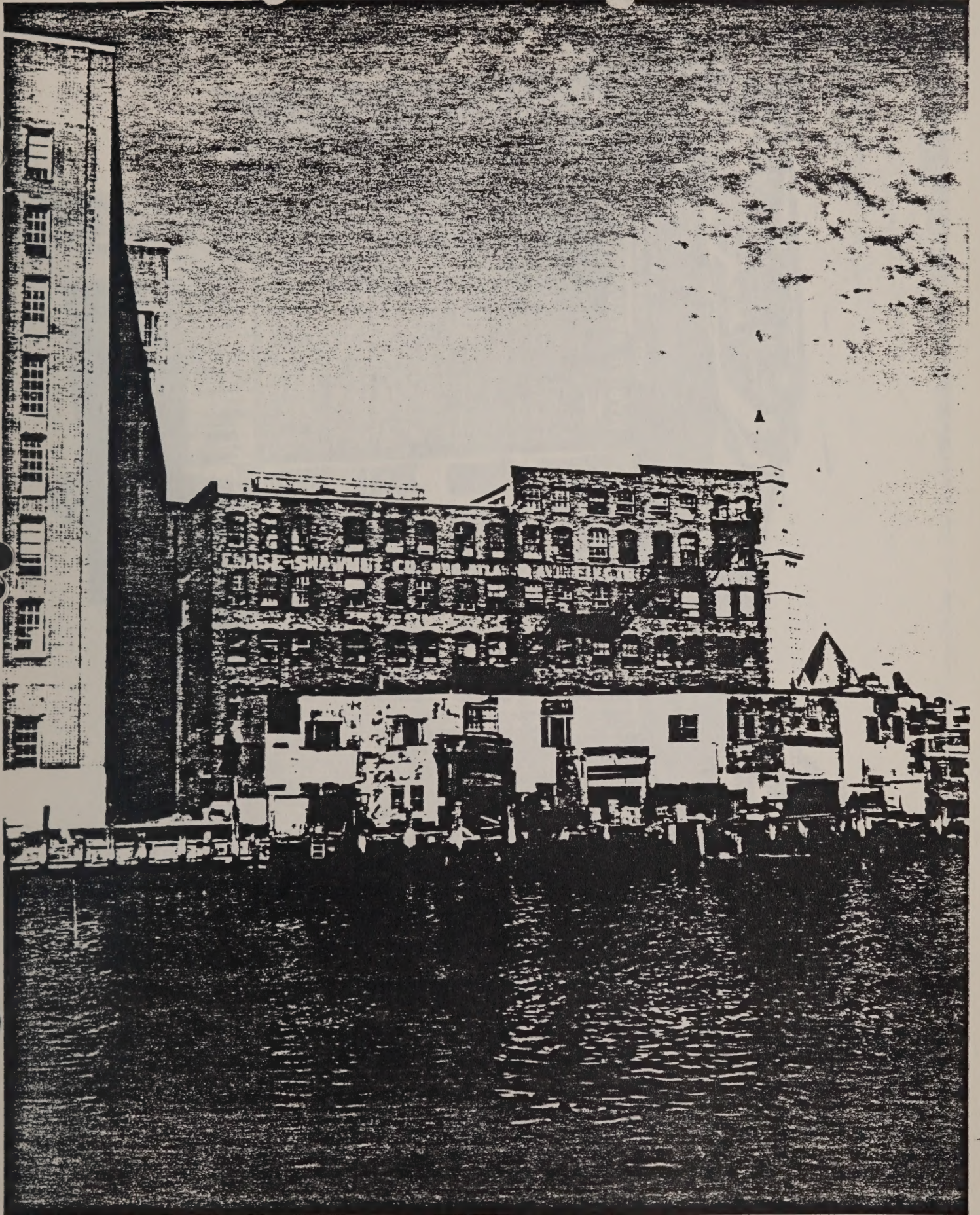
FOSTER'S WHARF

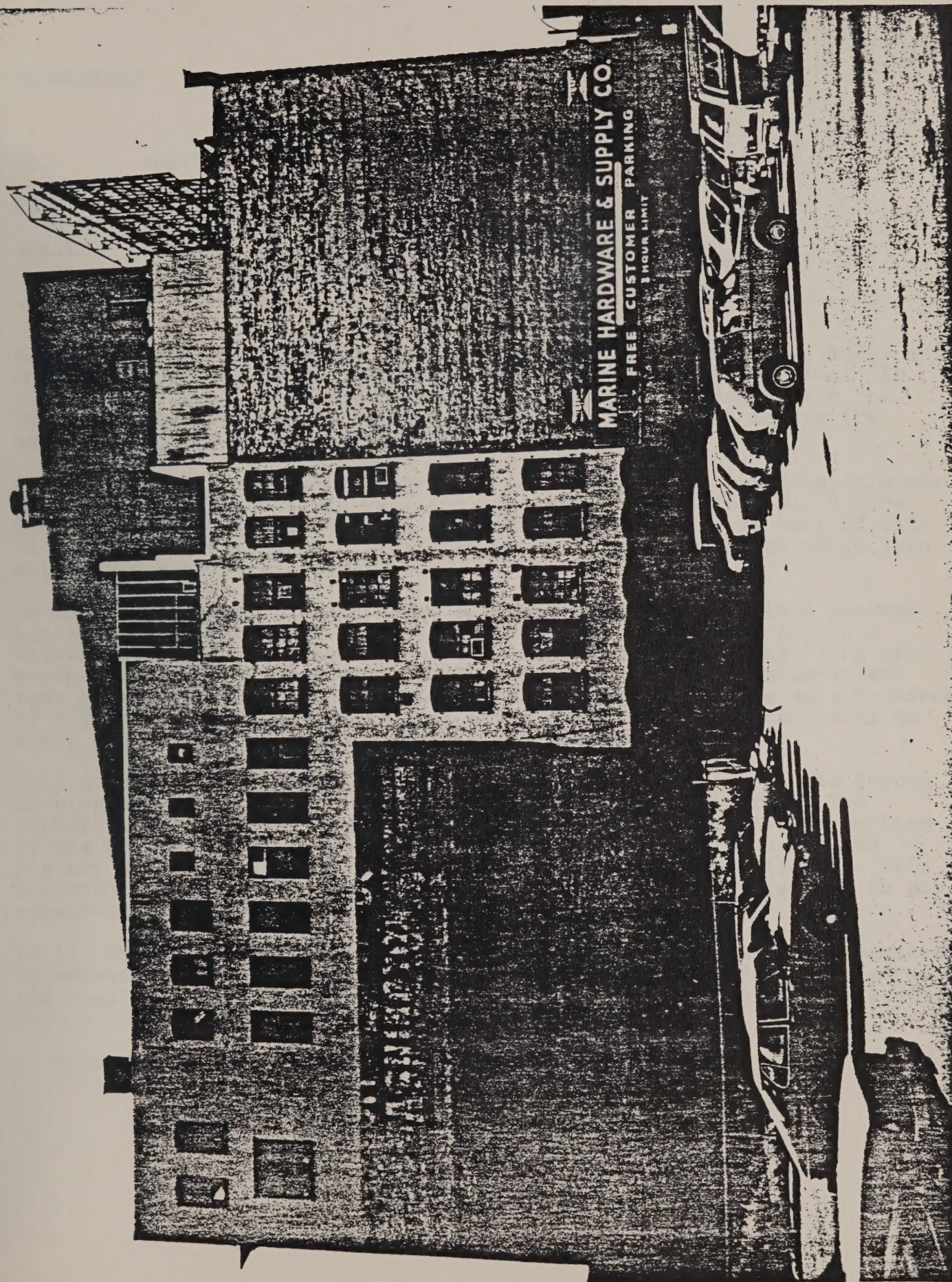
The land shown as Parcel 3B of Block 104B on a plan recorded at Suffolk Registry of Deeds, in Book 7929, Page 440, entitled "Property Line Map -- Downtown Waterfront - Fanueil Hall Area -- Mass. R-77 -- Boston Redevelopment Authority -- Boston - Suffolk County - Massachusetts", by Whitman & Howard, Inc., Engineers, 89 Broad Street, Boston, Mass., dated November, 1964.



PROJECT LOCATION IN BOSTON

PARK & PUBLIC WALKWAY SITE PLAN
JUNG/BRANNEN ASSOCIATES INC





MEMORANDUM

FEBRUARY 18, 1982

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: DOWNTOWN WATERFRONT PROJECT, MASS. R-77
COOPERATION AGREEMENT FOR 390-400 ATLANTIC AVENUE

Bain & Company, in order to meet its needs for expanded space, holds an option to purchase 390-400 Atlantic Avenue from A. W. Perry, Inc. It proposes to totally rehabilitate the building in accordance with the Waterfront Redevelopment Plan and, therefore, be able to manage its expanding business in Boston.

As part of the design service process on this blighted building, windows are needed in the northern wall and, to satisfy the fire code, a fire lane of 31 feet is needed along its northern wall. A large part of this 31 foot area consists of dilapidated piles and open water to which Bain will build a new pier structure.

In consideration of the air right easement for windows, Bain & Company has agreed to spend over \$500,000 in improving this area. A public walkway and rest area from Atlantic Avenue to the Waterfront along its northern side of the building along with a 15 foot public walkway and rest area adjacent to the 1880 Harbor Line along the entire east boundary of 400 Atlantic Avenue, consisting of landscaping and beaches, will be built and maintained by Bain and any successors in interest.

Bain & Company has agreed to cooperate with the Authority in the future development of Rows and Fosters Wharf and the easement area. The Authority has reserved rights to build over the Atlantic Avenue portion of the easement area so that any new proposed building on Rows and Fosters Wharf could be built up to the wall of the Bain building. Bain & Company has also agreed not to oppose any Authority development on the remainder of Rows and Fosters Wharf.

It is, therefore, recommended that the Authority enter into a Cooperation Agreement (copy of proposed agreement is attached) in order to effectuate the construction and maintenance of a public walkway and rest area by Bain & Company.

An appropriate vote follows:

VOTED: That the Director is hereby authorized in the name and on behalf of the Authority to execute and deliver with Bain and Company a Cooperation Agreement substantially in the form attached hereto, and is further authorized to execute appropriate instruments with Bain & Company to transfer the Authority's so called "residual rights" in this area as well as to transfer rights in the 31 foot easement area to the developers in order to effect development of the open land for a public walkway and rest area on the northern and eastern side of 400 Atlantic Avenue and to include any other terms and conditions in said instruments as the Director deems appropriate and in the best interest of the Authority.